

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

IVAN POTTS

vs.

EVODIO C. HENDRIX, *et. al.*

DEFENDANTS.

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CIV. ACTION NO. 16-cv-03187-TDC

**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO STAY**

The individual defendants, by counsel, have moved for a total stay of this case pending the resolution of their related criminal matter. Plaintiff respectfully opposes defendants' motion as unnecessary and premature.

The defendants are former members of the Baltimore Police Department's gun recovery unit who allegedly used perjured testimony and planted evidence to obtain the fraudulent conviction of plaintiff. Plaintiff alleges he that served two years in state prison before the fraud was discovered and his conviction vacated by the Maryland State's Attorney. Now these officers have been charged criminally for doing the same thing to other people. See, *United States v. Kenton Gondo, et. al.* 1:17-cr-00106-CCB.

In their motion to stay, defendants argue that their ability to conduct discovery will be impaired and that they have "no intention to waive their Fifth Amendment rights by being deposed." However, the defendants' depositions have not been noted, and their alleged harm at this point is speculative.

This case is at a very early stage. Discovery has not yet begun. Defendants have not filed responsive pleadings. Once they do, counsel will meet and confer under Rule

26, taking in consideration the tasks which can be accomplished now and the status of the criminal matter.

According to the docket sheet, one defendant, Evodio Hendrix, has already pled guilty, so his fifth amendment rights are waived. It is likely that the other defendants criminal cases will likewise be resolved before they would need to be deposed here.

A stay would be an extreme hardship for plaintiff, whose life was understandably turned upside down by his alleged wrongful conviction and 2 year prison term, which he contends was a product of perjury and fraud upon the court. His opportunity for justice should not be delayed because defendants have allegedly done the same thing to others and been criminally charged.

In any event, there is no reason to a complete stay of discovery. The individual defendant have counsel and can fully participate in discovery and depositions of non-indicted witnesses. The majority of documents are likely to be produced by the defendant Baltimore Police Department, who has not moved for a stay.

A district court has the power issue a total stay of discovery inherent in its power to manage its docket. *Landis v. N. American Co.*, 299 U.S. 248, 254 (1936). However, “a total stay of civil discovery pending the outcome of related criminal matters is an extraordinary remedy” See, *Weil v. Markowitz*, 829 F.2d 166, 174 n.17 (D.C. Cir. 1987). Here, the harm alleged by defendants is speculative. The court will likely be able to fashion remedies, if necessary, short of total stay, which balance the rights of the defendants against the interest of the plaintiff and public in the expeditious resolution of this case.

Wherefore, defendant motion for a stay should be denied.

/S/ PAUL ZUKERBERG

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CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of December, 2017, a copy of the foregoing was filed in accordance with the Electronic Filing Requirement and Procedures as established by the U.S. District Court for the District of Maryland.

/S/ PAUL ZUKERBERG

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Paul H. Zukerberg Bar #10081

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CIVIL ACTION NO. 16-cv-03187-TDC

**ORDER**

This cause is before the Court on defendants' motion for leave to file a second amended complaint, and that motion having been considered by the Court, along with any opposition thereto, and for good cause shown, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2017,

ORDERED, that the motion is **denied**, and it is further

ORDERED, that defendants shall file responsive pleadings within \_\_\_\_ days of this Order.

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UNITED STATES DISTRICT COURT JUDGE

cc. All parties and counsel of record